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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of JEFFREY S. and  
DEBRA A. STAUFFER.

JEFFREY S. STAUFFER,

Appellant,

v.

DEBRA A. STAUFFER,

Respondent.

D051010

(Super. Ct. No. DN122167)

APPEAL from orders of the Superior Court of San Diego County, William Dato,  
Judge. Affirmed.

In this marital dissolution action involving the marriage of Debra and Jeffrey Stauffer, Jeffrey<sup>1</sup> appeals from two 2007 child support orders modifying monthly child support from \$3,000 to \$41,282, retroactive to May 2002, the date of a previous stipulation as to the amount of child support pending a determination of Jeffrey's income.

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<sup>1</sup> We refer to the parties by their first names as is customary in family law matters. (*Marriage of Smith* (1990) 225 Cal.App.3d 469, 475, fn. 1.) We intend no disrespect.

On appeal, Jeffrey asserts the court's award was erroneous because (1) it lacked jurisdiction to make a support award retroactive to any date earlier than September 2006 when Debra filed her order to show cause (OSC) to modify support; (2) it abused its discretion in refusing to entertain Jeffrey's laches defense; (3) it failed to deduct Jeffrey's Florida business expenses from his income; (4) it placed the burden on Jeffrey to demonstrate that the high income exception to guideline child support should apply in this case; and (5) the court awarded guideline support at a time when it did not know what that amount was, and without assessing the children's needs. We affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

##### *A. OSC for Temporary Child Support*

In December 2001 Debra filed a petition to dissolve her marriage with Jeffrey and, at the same time, filed an OSC for temporary child support. Jeffrey responded by alleging his income was \$21,320 a month and listed assets exceeding \$2 million. The parties disputed the amount of Jeffrey's income, and which items should be considered a part of his income.

##### *B. Stipulated Order re Child Support*

In May 2002 the parties entered into a stipulated order that set child support at \$3,000 per month. The order further stated that it was "[w]ithout prejudice and pending hearing" and that "[t]he court shall reserve jurisdiction to the next hearing over [¶] 1. [r]etroactivity of [s]upport and amounts."

Thereafter, attempts to settle the matter were made, and the child support hearing was taken off calendar. When the settlement fell through, the court reiterated that "[t]he court shall reserve jurisdiction over retroactive effect of any subsequent orders."

*C. Attempts To Determine Jeffrey's Income*

In June 2004 Tony Yip, a certified public accountant, was appointed to determine the parties' incomes. In January 2005 the court ordered that "[a]ll documents are to be provided to [Yip] for his report by 2/1/05." Yip sent follow-up letters in April, May, July and August 2005, requesting a response from Jeffrey to his request for documents. In November 2005 Yip sent a request for additional documents and information from Jeffrey. Counsel for Debra made numerous phone calls to Jeffrey's counsel requesting that Jeffrey cooperate with Yip and inquiring about the status of document production. No response was received. In January 2006 counsel for Debra sent Jeffrey's counsel a request that Jeffrey immediately produce the additional documents so Yip's analysis could be completed. No documents were provided.

In February 2006 Debra brought an OSC to compel Jeffrey to cooperate with the forensic evaluation and sought sanctions for the attorney fees incurred in bringing the OSC. Jeffrey responded with a request that Debra be sanctioned.

In July 2006 the court ordered Jeffrey to comply with "any request by Yip for documents." The court also ordered Jeffrey to pay \$4,000 in sanctions.

*D. OSC To Modify Temporary Child Support Order*

In September 2006 Debra brought an OSC to modify the 2002 stipulated order to reflect Jeffrey's actual income. The OSC further requested that the modified child

support be made retroactive to May 2002. In support of the modification, Debra asserted her monthly expenses were over \$22,000 a month. She also asserted that Jeffrey's income for 2001 was \$452,100, in 2005 was \$1,553,803, and as of July 27, 2006, he had received income of \$1,299,600 for that year. He also had received a severance package from his work in the amount of \$3,607,620. Debra argued the purpose of the retroactivity stipulation was to allow the parties to complete discovery on the issue of Jeffrey's income.

In response, Jeffrey argued any modification should be retroactive only to the period of between May 2001, when Debra filed her original OSC, and May 2002, when the stipulated order was entered. Jeffrey also asserted guideline child support should not be used if the court considered his severance package as this would make him a "high income" wage earner. He also indicated he earned \$29,166 per month. He asked that his severance pay be apportioned over two years as that was how he was to be paid that money.

#### *E. Court's Order*

In March 2007 the court ordered that Jeffrey "shall pay to [Debra] as and for child support, commencing May 1, 2002 and for every month thereafter, guideline child support based on income to [r]espondent as set forth in the Income Analysis Report of Tony Yip and income to [Debra] based on the Income Analysis Report of Tony Yip and the findings of the court set forth herein below. The court finds that it has jurisdiction to make child and spousal support orders retroactive to May, 2002 based on the Court's reservation of jurisdiction to do so contained in prior orders of this Court. The child and

spousal support orders entered herein shall be retroactive to May, 2002. Guideline child support shall be apportioned based on the ages of the children." The court also found that Jeffrey presented insufficient evidence to deviate from guideline support. The court declined to allow Jeffrey to deduct his Florida vehicle and residence as business expenses as they were not proper business expenses. However, the court ruled this was without prejudice to Jeffrey proving at trial that they were proper business expenses under the Internal Revenue Code. The court imputed income to Debra according to a vocational expert report.

The court set a review hearing for May 2007 to finalize the calculations as to the exact amount of spousal and child support consistent with Yip's findings. Going forward, the court awarded child support at approximately \$41,000 per month. At that hearing, the court also ordered retroactive support, but had Yip rerun his calculations for support from 2002 forward. The amount of the retroactive support is not at issue on this appeal.

This timely appeal for the March and May 2007 orders followed.

## DISCUSSION

### I. *RETROACTIVE CHILD SUPPORT*

Ordinarily, "[a]n order modifying or terminating a support order may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate, or to any subsequent date . . . ." (Fam. Code, § 3653.)<sup>2</sup> Thus, by its plain terms, the statute "permits the trial court to make its ruling retroactive to the filing

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<sup>2</sup> All further statutory references are to the Family Code.

date of the motion, but no earlier." (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 300 (*Cheriton*)). As one court has put it, "[t]he filing date, in other words, establishes the outermost limit of retroactivity." (*In re Marriage of Murray* (2002) 101 Cal.App.4th 581, 595 (*Murray*)). A court lacks jurisdiction to make a modification retroactive to any earlier date. (*Cheriton, supra*, 92 Cal.App.4th at p. 300.)

However, this rule is not applicable where the parties *stipulate* to a different result. In *In re Marriage of Czapar* (1991) 232 Cal.App.3d 1308, the parties owned a business called ACE. The husband was the manager, and the wife was an employee of the business. After they separated, husband fired his wife from her job, whereupon she filed an order to show cause for spousal support. In response, the parties stipulated ACE would pay the wife \$2,000 a month. These payments were characterized in the stipulation as a distribution of community property, but were made " 'subject to being reclassified at the time of trial--in the trial judges [*sic*] discretion . . . . ' " (*Id.* at p. 1316.) In the judgment of dissolution the trial judge reclassified the payments as spousal support. Husband challenged the reclassification on appeal, claiming the court's reclassification of the spousal support constituted an improper retroactive award of temporary support. The Court of Appeal rejected this argument: "We reject [husband's] argument that the trial court cannot award pendente lite support retroactively. [Husband] specifically stipulated that the amounts paid to [wife] by ACE were subject to reclassification, essentially agreeing to just such an action by the court. The evidence amply supports the trial court's exercise of its discretion." (*Id.* at p. 1317; see also *Murray, supra*, 101 Cal.App.4th at pp.

597-598 [distinguishing *Czapar* on this basis to find support could not be made retroactive to date earlier than motion].)

Likewise in this case, the parties stipulated the award of temporary child support was "[w]ithout prejudice and pending hearing" and reserved jurisdiction on "[r]etroactivity of support and amounts." The court found by this language the parties intended that once Jeffrey's income was determined, any subsequent order of support could be applied retroactively to the date of that stipulated order. The court did not abuse its discretion in making the 2006 child support retroactive.

## II. *LACHES*

Jeffrey next asserts the court abused its discretion when it refused to entertain his laches defense. This contention is unavailing.

### A. *Background*

In opposition to Debra's OSC to modify child support, Jeffrey argued she had unreasonably delayed in bringing the matter as she "had all the information she needed as early as January 2002 and failed to act." The court denied the defense, finding (1) a laches defense was very limited in cases involving child support; (2) there was a stipulation that the amount of child support originally stipulated to was without prejudice to a recalculation; and (3) that matter had not yet gone to trial.

### B. *Analysis*

Family law courts have traditionally been regarded as courts of equity. (*In re Marriage of Fogarty and Rasbeary* (2000) 78 Cal.App.4th 1353, 1360.) Laches is an equitable defense to the enforcement of a stale claim. (*Id.* at p. 1359.) Laches applies

when the complaining party has unreasonably delayed in the enforcement of a right, and where that party has either acquiesced in the adverse party's conduct or where the adverse party has suffered prejudice thereby, which makes the granting of relief unfair or inequitable. (*Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.3d 351, 359.) The defense of laches is derived from the maxim that the law helps the vigilant before those who sleep on their rights. (*In re Marriage of Plescia* (1997) 59 Cal.App.4th 252, 256.)

Contrary to Jeffrey's position, the record, as described *ante*, demonstrates the court did not refuse to exercise its discretion in denying Jeffrey's laches defense. Rather, the court considered it and rejected it on the merits.

Second, the court did not abuse its discretion in denying that defense. There was sufficient evidence presented by Debra that the long delay in ascertaining Jeffrey's income was due, at least in part, to his failure to produce evidence from which the expert, Yip, could calculate his income. Jeffrey ignores the fact he was sanctioned for failing to produce discovery. The record does not support Jeffrey's contention the court abused its discretion on this issue.

### III. *FLORIDA BUSINESS EXPENSES*

#### A. *Background*

In his declaration in opposition to Debra's OSC, Jeffrey stated that the employment contract with his new employer in Florida "require[d] [him] to maintain a home there in addition to his family's home in San Diego County as well as incur [expenses for] commuting each week between the homes via air." According to Jeffrey,



he incurred approximately \$50,000 per year for those expenses, which he sought to deduct from his income. Debra responded that it was his choice to maintain the California residence in addition to the one in Florida.

As stated above, the court rejected these expenses. It is true that the court questioned whether they were proper expenses according to the IRS. However, the record demonstrates the court also questioned whether the expenses were "necessary" and proper. The court questioned whether it was "necessary," or a matter of preference, to maintain one household in California and one in Florida. The court also stated that it would revisit the issue at trial if Jeffrey could show the expenses were recognized as proper under the Internal Revenue Code.

#### B. *Analysis*

Under section 4059, subdivision (f), the court may, in its discretion, deduct from income, "Job related expenses, if allowed by the court after consideration of whether the expenses are necessary, the benefit to the employee, and any other relevant facts."

Generally, "income" is broadly defined by the statutory scheme, while the deduction provisions are specific and narrowly construed. (*Stewart v. Gomez* (1996) 47 Cal.App.4th 1748, 1755.) In practice, the precise determination of a party's gross and net income is subject to considerable court discretion. (See *County of Placer v. Andrade* (1997) 55 Cal.App.4th 1393, 1396.)

Here, the court did not abuse its discretion in deciding not to deduct Jeffrey's Florida business expenses. Jeffrey chose to take a job in Florida, but to maintain a second home for his new wife in California. He was spending \$50,000 a year to maintain

a lifestyle for himself and his new family. The court could reasonably conclude that these expenses were the result of a lifestyle choice, and not necessity. The court reasonably also found that this lifestyle choice was at the expense of his children in seeking to reduce his child support obligations. Finally, the court made this order subject to reconsideration at trial should he be able to show that these expenses were proper under the Internal Revenue Code. On this record Jeffrey cannot show the court erred in exercising its discretion to refuse to deduct these expenses.

#### IV. *GUIDELINE CHILD SUPPORT*

Jeffrey asserts the court erred when it placed the burden of proof on him to show the "High Wage Earner" exception from guideline support applied. This contention is unavailing.

##### A. *Standard of Review*

We review a court's decision whether to depart from guideline support under the deferential abuse of discretion standard. (*In re Marriage of Corman* (1997) 59 Cal.App.4th 1492, 1497.) Such an abuse will be established " 'only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order made [citations.]' " (*In re Marriage of Sullivan* (1984) 37 Cal.3d 762, 769.)

##### B. *Analysis*

Section 4057 provides in part:

"(a) The amount of child support established by the formula provided in subdivision (a) of Section 4055 *is presumed to be the correct amount of child support to be ordered.* [¶] (b) *The presumption of subdivision (a) is a rebuttable presumption affecting the burden of proof and may be rebutted by admissible evidence*

*showing that application of the formula would be unjust or inappropriate in the particular case . . . because one or more of the following factors is found to be applicable by a preponderance of the evidence . . . .: [¶] (3) The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children." (Italics added.)*

Section 4053, subdivision (k) provides: "The guideline is intended to be presumptively correct in all cases, and only under special circumstances should child support orders fall below the child support mandated by the guideline formula."

Based upon these statutory provisions, the party seeking to show one of the exceptions to guideline support bears the burden of proof on this issue. (*County of Stanislaus v. Gibbs* (1997) 59 Cal.App.4th 1417, 1426.) Thus, a high income parent has the burden of showing an award of guideline amount is unjust or inappropriate because it exceeds the children's reasonable needs and a downward adjustment is thus consistent with the child's best interests. (*Cheriton, supra*, 92 Cal.App.4th at p. 297.)

Thus, Jeffrey's assertion the court erred in placing the burden on him to justify the high wage earner exception to guideline support is directly contrary to specific statutory authority. Jeffrey has provided no authority that we may ignore this explicit direction of the Legislature.

Indeed, Jeffrey admits in his opening brief that he failed to meet his burden of proof on this issue. However, he contends the burden of proof should be shifted to Debra because the information from which a needs determination could be made was in Debra's sole possession. We reject this contention.

It was Jeffrey's responsibility to conduct whatever discovery was necessary to determine this issue. If the information was not forthcoming from Debra, he was required, as Debra did, to file a motion compelling production of such information.

Jeffrey asserts Debra's income and expense declarations support his position that the burden should be shifted and that guideline support is inappropriate in this case, because they show the children's actual expenses, thus demonstrating their needs were already being met. This contention is unavailing.

Historical evidence of actual expenses does not show need as that was the product of the money available and may represent an artificially depressed standard of living. Rather, the needs of children are measured by the standard of living of *both* parents: "Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children." (§ 4053, subd. (f).)

Moreover, a child is entitled to share the standard of living of a parent whose standard of living has improved since the divorce. And the child's needs include the need for future financial security. (*In re Marriage of Kerr* (1999) 77 Cal.App.4th 87, 95, 97, fn. 8 (*Kerr*).) Where children have a wealthy parent, their needs are measured not by their historic expenses, but by the parent's current station in life. (*Cheriton, supra*, 92 Cal.App.4th at p. 293.) Thus, a temporary child support order of \$13,488 per month was held not to be an abuse of discretion where the father failed to carry his burden and where the parties, before separation, had an elaborate lifestyle including substantial amounts to save and invest, and father's income was many times greater than mother's income. (*In re*

*Marriage of Wittgrove* (2004) 120 Cal.App.4th 1317, 1328.) In arguing guideline support is not appropriate, Jeffrey ignores his own income and standard of living.

The foregoing authority makes clear that the burden of proof on showing the extraordinarily high earner exception rested squarely with Jeffrey. Jeffrey has provided no authority or persuasive argument for deviating from the explicit law, as well as the policies underlying guideline child support.

Moreover, the court acted well within its discretion in using guideline support. Jeffrey does not dispute the amount of his income. That called for guideline support of approximately \$41,277. The original stipulated amount was \$3,000 per month or roughly one-fourteenth of guideline support. According to Jeffrey's most current income and expense declaration, his monthly expenses were \$48,424. He spent \$5,000 of that money a month, more than the \$3,000 in child support, just to maintain four cars.

Jeffrey also contends the court abused its discretion by deciding to utilize guideline child support in March 2007 before it knew, in May 2007, what the actual amount of guideline support would be. However, at the March 2007 hearing, the court had before it Yip's income analysis of Jeffrey's income. Although the court ordered Yip to redo some calculations, counsel for Jeffrey admitted "the numbers are so large that the difference isn't going to make a great deal of change in what the court ultimately decides. We think Yip is close, but we think he's off by a few numbers." Thus, the court could reasonably determine that guideline support would not exceed the children's needs.

DISPOSITION

The orders are affirmed. Debra shall recover her costs on appeal.

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NARES, J.

WE CONCUR:

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HUFFMAN, Acting P. J.

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McDONALD, J.